



U.S. Department of Justice

Immigration and Naturalization Service

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*Information deleted to
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concerning personal privacy*

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: LIN 00 241 52706 Office: Nebraska Service Center Date: 07 JAN 2002

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER: [Redacted]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a computer network and trading company employing four persons with a gross annual income of \$2 million. It seeks to employ the beneficiary as an accounts executive for a period of three years. The director determined the petitioner had not established that the offered position is a specialty occupation.

On appeal, counsel argues that the offered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully

practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary completed all of the requirements for the Bachelor of Business Administration Degree in Accounting effective December 1999 at the Jesse H. Jones School of Business at Texas Southern University. The record shows that the official ceremony awarding him his degree was scheduled to be held in May 2000.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The duties of the offered position are listed as:

Project and Contract Management, Execution and Implementation. (30%)

- Responsible for the coordination, execution and implementation of strategic analytic projects for the ACT Inc.
- Responsible for timely delivery and execution of project tasks as measured by external and internal indicators. Assist in developing of timeliness and budgets for projects.
- Monitor contracts and projects to ensure targeted yield/return hurdles are realized. Performed sophisticated financial modeling for projects as needed.

Detail financial and risk analysis of Business Partner's finance, credit, and Business plans. 5%)

- Obtain all available and necessary financial data from the borrower, analyzing financial statements, studying and evaluating the financial information and preparing written reports for the business customer.
- Review files, reports and financial statement analysis of ongoing and prospective customers.
- Responsible for analyzing lease transactions, credit, equipment and documentation risks are properly identified, perform annual and interim review of customer programs, ensure credit requests are processed in a timely manner.
- Develops and analyzes various types of credit information pertaining to diverse types of commercial plan. Perform credit analysis and industry studies on existing customers and new prospects.
- Determine credit exposure based on insurance programs and manage risk through credit analysis of financial statements and negotiation of collateral and contract requirements.

Development of financial models for new business plans and projects, account analysis, financial reporting, Vertical Market Analysis and revenue trend analysis. (25%)

- Develop and implement creative strategies to improve internal procedures and increase ability to undertake new business opportunities. Provide primary support for pricing/structuring of financial proposals for marketing.

- Prepare, consolidate and/or analyze periodic financial reports for management, investigate and explain unusual variances; identify, research, monitor and report operational trends, which impact business performance. This included budget collection, analysis and reporting in all annual planning cycles, as well as quarterly assessments and the monthly closing of accounting books.

- Identify and present to management, business opportunities/improvements that positively impact financial results. This included presentation of business statistics/information and analysis covering a broad range of operating needs and business concerns.

- Work with company CPA to ensure that accounting activity accurately reflects underlying business activity and those transactions are recorded in accordance with US GAAP and are in compliance with the company's policies and procedures.

- Gathering Requirements from Clients to understand their Information Technology needs. (20%)

- Interface with client's information technologist to understand their needs and requirements. Translate customers' requirements into IT solutions.

- Provided cross-functional and cross-departmental coordination. Acted as a liaison between the client and the company.

- Make recommendations regarding potential Hardware/software solution to business issues. Coordinate evaluations of software vendors and solutions.

- Ensure that the Hardware/Software provided to the clients meet the expectation of the clients and their business needs.

- Develop reports that assist in software implementation process and satisfy business requirements. These reports will detail the effectiveness of the IT solutions provided by ACT Inc to its clients.

Counsel submits copies of job opportunities from Fortune 500 companies and asserts that these job descriptions are similar to

those for the offered position. Counsel states that all of these positions require 4-year degrees in finance or accounting and very specialized skill sets. None of the job descriptions submitted from the Fortune 500 companies parallel the duties of the offered position as outlined for the record. Counsel also submits copies of degrees from employees currently employed by Act, Inc. Counsel states that these employees have similar job duties as the beneficiary and indicates that their degrees provide proof that the employer normally requires a degree or its equivalent for similar positions. The job descriptions for the other employees were not forwarded for the record. Also, it is noted that none of the credentials submitted reflect degrees in the same field of study as the beneficiary. It is determined that the submission of copies of these degrees without position descriptions does not establish that the employer normally requires a degree or its equivalent for similar positions.

The petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the offered position. In addition, the petitioner has not shown that similar firms require the services of such individuals in parallel positions.

In these proceedings, the duties of the position are dispositive and not the job title. The offered position reflects the duties of a general manager or executive. In its Handbook, 2000-2001 edition, at pages 50-51, the Department of Labor does not state that a baccalaureate or higher degree in a specialized area for employment as a general manager or executive. Degrees in business and in liberal arts fields appear equally welcome. In addition, certain personal qualities and participation in company training programs are often considered as important as a specific formal academic background.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.